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15 LLC

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF ALAMEDA**

18 **ENVIRONMENTAL RESEARCH**  
19 **CENTER, INC., a California non-profit**  
20 **corporation**

21 **Plaintiff,**

22 **vs.**

23 **THE FEED.COM, INC.; KYOKU**  
24 **SUPERFOODS LLC; and DOES 1-100**

25 **Defendants.**

26 **CASE NO. 23CV028038**

27 **STIPULATED CONSENT**  
28 **JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 16, 2023

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On February 16, 2023, Plaintiff Environmental Research Center, Inc. (“ERC”),  
3 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
5 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against The Feed.com, Inc. and Kyoku Superfoods LLC (collectively “The  
2 Feed”) and Does 1-100. In this action, ERC alleges that a number of products manufactured,  
3 distributed, or sold by The Feed contain lead and/or cadmium and/or mercury, chemicals listed  
4 under Proposition 65 as carcinogens and/or reproductive toxins, and expose consumers to these  
5 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Swiss RX  
7 Total Recovery Chocolate Mint (lead, cadmium, mercury), (2) Kyoku Daily Superfood Shake  
8 (lead, mercury), (3) Swiss RX Total Recovery Vanilla Chai (lead, cadmium), (4) Swiss RX  
9 Total Recovery Strawberry (lead, cadmium, and mercury), and (5) Swiss RX Nitric Oxide  
10 (lead).

11 **1.2** ERC and The Feed are hereinafter referred to individually as a “Party” or  
12 collectively as the “Parties.”

13 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
16 and encouraging corporate responsibility.

17 **1.4** For purposes of this Consent Judgment, the Parties agree that The Feed is a  
18 business entity that has employed ten or more persons at all times relevant to this action, and  
19 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. The  
20 Feed manufactures, distributes, and/or sells the Covered Products.

21 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
22 dated September 29, 2022 and October 25, 2022 that were served on the California Attorney  
23 General, other public enforcers, and The Feed (“Notices”). True and correct copies of the 60-  
24 Day Notices dated September 29, 2022 and October 25, 2022 are attached hereto as **Exhibits**  
25 **A** and **B** and each is incorporated herein by reference. More than 60 days have passed since  
26 the Notices were served on the Attorney General, public enforcers, and The Feed and no  
27 designated governmental entity has filed a Complaint against The Feed with regard to the  
28 Covered Products or the alleged violations.

1           **1.6**     ERC’s Notices and Complaint allege that use of the Covered Products by  
2 California consumers exposes them to lead and/or cadmium and/or mercury without first  
3 receiving clear and reasonable warnings from The Feed, which is in violation of California  
4 Health and Safety Code section 25249.6. The Feed denies all material allegations contained in  
5 the Notices and Complaint.

6           **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
7 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
8 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
9 or be construed as an admission by any of the Parties or by any of their respective officers,  
10 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
11 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
12 issue of law, or violation of law.

13           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
15 any current or future legal proceeding unrelated to these proceedings.

16           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
17 with signature as a Judgment by this Court.

18       **2.    JURISDICTION AND VENUE**

19           For purposes of this Consent Judgment and any further court action that may become  
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
21 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
22 over The Feed as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
23 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
24 all claims up through and including the Effective Date that were or could have been asserted in  
25 this action based on the facts alleged in the Notices and Complaint.

26       **3.    INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

27           **3.1**     Beginning on the Effective Date, The Feed shall be permanently enjoined from  
28 manufacturing for sale in the State of California, “Distributing into the State of California,” or

1 directly selling in the State of California, any Covered Product that exposes a person to a  
2 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or “Daily  
3 Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day and/or “Daily  
4 Mercury Exposure Level” of more than 0.3 micrograms of mercury per day unless it meets the  
5 warning requirements under Section 3.2.

6 **3.1.1** As used in this Consent Judgment, the terms “Distributing into the State  
7 of California” and “Distributed into the State of California” shall mean to directly ship a  
8 Covered Product into California for sale in California or to sell a Covered Product to a  
9 distributor that The Feed knows will sell the Covered Product in California.

10 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
11 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
12 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
13 product (using the largest serving size appearing on the product label), multiplied by servings  
14 of the product per day (using the largest number of recommended daily servings appearing on  
15 the label), which equals micrograms of lead exposure per day. If the label contains no  
16 recommended daily servings, then the number of recommended daily servings shall be one.

17 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product, The  
18 Feed shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in any  
19 ingredient listed in **Table 1** that is contained in that Covered Product under the following  
20 conditions: For the first three (3) years that The Feed claims entitlement to a “naturally  
21 occurring” allowance, The Feed shall provide ERC with the following information: (a) The Feed  
22 must produce to ERC a written list of each ingredient in the Covered Product, and the amount,  
23 measured in grams, of each such ingredient contained therein, for which a “naturally occurring”  
24 allowance is claimed; (b) The Feed must provide ERC with documentation of laboratory testing,  
25 conducted during the year for which the “naturally occurring” allowance is claimed, that  
26 complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in  
27 any ingredient listed in **Table 1** that is contained in the Covered Product and for which The Feed  
28 intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of

1 lead in any ingredient listed in **Table 1** that is contained in the Covered Product, The Feed shall  
 2 be entitled to deduct the amount of lead contained in each such ingredient, up to the full amount  
 3 of the allowance for that ingredient as listed in **Table 1** but not to exceed the total amount of lead  
 4 actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does  
 5 not contain an ingredient listed in **Table 1**, The Feed shall not be entitled to a deduction for  
 6 “naturally occurring” lead in the Covered Product for that ingredient. The information required  
 7 by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the first  
 8 anniversary of the Effective Date, and annually within thirty (30) days of the anniversary of the  
 9 Effective Date, for the first (3) three years that The Feed shall claim entitlement to the “naturally  
 10 occurring” allowance. After the first (3) three years, ERC may request this information, no more  
 11 than once per year thereafter, and The Feed shall provide the requested information to ERC  
 12 within thirty (30) days of such request.

13 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 1.0 microgram/gram
Chocolate Liquor	Up to 1.0 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 microgram/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram

28 **3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure

1 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
2 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
3 the product (using the largest serving size appearing on the product label), multiplied by  
4 servings of the product per day (using the largest number of recommended daily servings  
5 appearing on the label), which equals micrograms of cadmium exposure per day. If the label  
6 contains no recommended daily servings, then the number of recommended daily servings  
7 shall be one.

8 **3.1.5** For purposes of this Consent Judgment, the “Daily Mercury Exposure  
9 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
10 micrograms of mercury per gram of product, multiplied by grams of product per serving of the  
11 product (using the largest serving size appearing on the product label), multiplied by servings  
12 of the product per day (using the largest number of recommended daily servings appearing on  
13 the label), which equals micrograms of mercury exposure per day. If the label contains no  
14 recommended daily servings, then the number of recommended daily servings shall be one.

15 **3.1.6** So long as The Feed can provide documentation, if requested in writing by  
16 ERC, Covered Products shipped, sold, or Distributed into the State of California by The Feed  
17 prior to the Effective Date are not bound by the injunctive terms set forth in this Section 3,  
18 including but not limited to the Daily Lead Exposure Level, Daily Cadmium Exposure Level,  
19 Daily Mercury Exposure Level, and warning and testing requirements, and are instead permitted  
20 to be sold as is to California Consumers and are expressly released by Section 8 of this Consent  
21 Judgment.

### 22 **3.2 Clear and Reasonable Warnings**


23 If The Feed is required to provide a warning pursuant to Section 3.1, one of the following  
24 warnings must be utilized (“Warning”):

#### 25 **OPTION 1:**

26 **WARNING:** Consuming this product can expose you to chemicals including [lead] [and]  
27 [cadmium] [and] [mercury] which is [are] known to the State of California to cause [cancer  
28 and] birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

1 OR

2 **OPTION 2:**

3  **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

4  
5 The Feed shall use the phrase “cancer and” in the Warning if The Feed has reason to  
6 believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined  
7 pursuant to the quality control methodology set forth in Section 3.4 or if The Feed has reason to  
8 believe that another Proposition 65 chemical is present which may require a cancer warning. For  
9 the Option 2 Warning, the entire Warning must be in a type size no smaller than the largest type  
10 size used for other consumer information on the product. In no case shall the Warning appear in a  
11 type size smaller than 6-point type. Further, for Option 2, a symbol consisting of a black  
12 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the  
13 left of the text of the Warning, in a size no smaller than the height of the word “**WARNING.**”

14 Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol  
15 may be printed in black and white. As identified in the brackets, the warning shall appropriately  
16 reflect at least one chemical present in each of the Covered Products.

17 The Warning shall be provided through one of the following methods: (1) a product-  
18 specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at  
19 each point of display of the product; or (2) a product-specific warning provided via any  
20 electronic device or process that automatically provides the warning to the purchaser prior to or  
21 during the purchase of the consumer product, without requiring the purchaser to seek out the  
22 warning; or (3) a warning on the label that is securely affixed to or printed upon the label and  
23 complies with this Section 3.2. If the Warning is printed upon the label of the Covered  
24 Product, it must be set off from other surrounding information and enclosed in a box. In  
25 addition, for any Covered Product sold over the internet, the Warning shall appear prior to  
26 check-out on the primary product page, or as a pop-up when a California zip code is input into  
27 the shipping instructions, or on the checkout page when a California delivery address is  
28 indicated for any purchase of any Covered Product. Where a Warning subject to this section is

1 provided solely on the checkout page, an asterisk or other identifying method must be utilized  
2 to identify which products on the checkout page are subject to the Warning. The Warning may  
3 be provided with a conspicuous hyperlink stating “**WARNING**” in all capital and bold letters  
4 so long as the hyperlink goes directly to a page prominently displaying the Warning without  
5 content that detracts from the Warning. Given The Feed’s lack of control over third-party  
6 websites, the online warning requirements expressed in this Section apply only to Covered  
7 Products sold through The Feed’s website. In all cases, a warning is not prominently displayed  
8 if the purchaser must search for it in the general content of the website.

9         With respect to any downstream reseller customers of The Feed who are subject to  
10 Proposition 65, The Feed may give written notice, including labels, labeling, shelf signs, or  
11 tags bearing the Warning, and all other necessary warning materials, to the authorized agent of  
12 such downstream reseller customers. Such written notice shall instruct the downstream reseller  
13 customers that the labels, labeling, shelf signs, or tags bearing the Warning must be displayed  
14 on or in proximity to the Covered Products with such conspicuousness, as compared with other  
15 words, statements or designs as to render the Warning likely to be seen, read, and understood  
16 by an ordinary individual prior to sale.

17         The Warning shall be at least the same size as the largest of any other health or safety  
18 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
19 capital letters and in bold print. No statements intended to or likely to have the effect of  
20 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
21 Further no statements may accompany the Warning that state or imply that the source of the listed  
22 chemical has an impact on or results in a less harmful effect of the listed chemical.

23         The Feed must display the above Warning with such conspicuousness, as compared with  
24 other words, statements or designs on the label, or on its website, if applicable, to render the  
25 Warning likely to be read and understood by an ordinary individual under customary conditions  
26 of purchase or use of the product.

27         For purposes of this Consent Judgment, the term “label” means a display of written,  
28 printed or graphic material that is printed on or affixed to a Covered Product or its immediate



1 container or wrapper.

2 If subsequently enacted changes to Proposition 65 or its implementing regulations require  
3 the use of additional or different information on any warning specifically applicable to the  
4 Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor  
5 Warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this  
6 Section.

### 7 **3.3 Conforming Covered Products**

8 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
9 Level” is no greater than 0.5 micrograms of lead per day and/or the “Daily Cadmium Exposure  
10 Level” is no greater than 4.1 micrograms of cadmium per day and/or the “Daily Mercury  
11 Exposure Level” is no greater than 0.3 micrograms of mercury per day as determined by the  
12 exposure methodology set forth in Section 3.1.2 and the quality control methodology described in  
13 Section 3.4, and that is not known by The Feed to contain other chemicals that violate Proposition  
14 65’s safe harbor thresholds.

### 15 **3.4 Testing and Quality Control Methodology**

16 **3.4.1** Beginning within one year of the Effective Date, The Feed shall arrange  
17 for lead, cadmium, and mercury testing of the Covered Products at least once a year for a  
18 minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected  
19 samples of each of the Covered Products, in the form intended for sale to the end-user, which  
20 The Feed intends to sell or is manufacturing for sale in California, directly selling to a  
21 consumer in California or “Distributing into the State of California.” If tests conducted  
22 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
23 each of three (3) consecutive years, then the testing requirements of this Section will no longer  
24 be required as to that Covered Product. However, if during or after the three-year testing  
25 period, The Feed changes ingredient suppliers for any of the Covered Products and/or  
26 reformulates any of the Covered Products, The Feed shall test that Covered Product annually  
27 for at least three (3) consecutive years after such change is made.

28 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the

1 “Daily Cadmium Exposure Level” and/or the “Daily Mercury Exposure Level,” the highest  
2 lead and/or cadmium and/or mercury detection result of the three (3) randomly selected  
3 samples of the Covered Products will be controlling.

4 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
5 laboratory method that complies with the performance and quality control factors appropriate  
6 for the method used, including limit of detection and limit of quantification, sensitivity,  
7 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
8 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
9 mg/kg.

10 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
11 independent third party laboratory certified by the California Environmental Laboratory  
12 Accreditation Program or an independent third-party laboratory that is registered with the  
13 United States Food & Drug Administration.

14 **3.4.5** Nothing in this Consent Judgment shall limit The Feed’s ability to  
15 conduct, or require that others conduct, additional testing of the Covered Products, including  
16 the raw materials used in their manufacture.

17 **3.4.6** Within thirty (30) days of ERC’s written request, which request shall not  
18 be made more than once per year, The Feed shall deliver lab reports obtained pursuant to  
19 Section 3.4 to ERC. The Feed shall retain all test results and documentation for a period of  
20 three years from the date of each test.

21 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to any  
22 Covered Product for which The Feed is providing a Warning, continuously and without  
23 interruption from the Effective Date, pursuant to Section 3.2 of this Consent Judgment. In the  
24 event a Warning is provided after the Effective Date but The Feed thereafter ceases to provide  
25 the Warning, the testing and reporting requirements of Section 3.4 of this Consent Judgment  
26 shall apply beginning within one year after the date the Warning ceases to be provided, unless  
27 The Feed can show to the satisfaction of ERC that the cessation in providing the Warning was a  
28 temporary error that was resolved when discovered.

1     **4. SETTLEMENT PAYMENT**

2             **4.1**     In full satisfaction of all potential civil penalties, additional settlement  
3 payments, attorney’s fees, and costs, The Feed shall make a total payment of \$55,500.00  
4 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). The  
5 Feed shall make this payment by wire transfer to ERC’s account, for which ERC will give The  
6 Feed the necessary account information. The Total Settlement Amount shall be apportioned as  
7 follows:

8             **4.2**     \$8,000.00 shall be considered a civil penalty pursuant to California Health and  
9 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,000.00) of the civil penalty to the  
10 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
11 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
12 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,000.00) of the civil penalty.

13             **4.3**     \$3,696.77 shall be distributed to ERC as reimbursement to ERC for reasonable  
14 costs incurred in bringing this action.

15             **4.4**     \$17,600.00 shall be distributed to Michael Freund & Associates as  
16 reimbursement of ERC’s attorney fees, while \$26,203.23 shall be distributed to ERC for its in-  
17 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
18 costs.

19             **4.5**     In the event that The Feed fails to remit the Total Settlement Amount owed  
20 under Section 4 of this Consent Judgment on or before the Due Date, The Feed shall be  
21 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
22 provide written notice of the delinquency to The Feed via electronic mail. If The Feed fails to  
23 deliver the Total Settlement Amount within five (5) days from the written notice, the Total  
24 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the  
25 California Code of Civil Procedure section 685.010. Additionally, The Feed agrees to pay  
26 ERC’s reasonable attorney’s fees and costs for any efforts to collect the payment due under  
27 this Consent Judgment.

28     ///

1     **5.    MODIFICATION OF CONSENT JUDGMENT**

2           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
4 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
5 modified consent judgment.

6           **5.2**     If The Feed seeks to modify this Consent Judgment under Section 5.1, then The  
7 Feed must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to  
8 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
9 provide written notice to The Feed within thirty (30) days of receiving the Notice of Intent. If  
10 ERC notifies The Feed in a timely manner of ERC’s intent to meet and confer, then the Parties  
11 shall meet and confer in good faith as required in this Section. The Parties shall meet in person  
12 or via telephone within thirty (30) days of ERC’s notification of its intent to meet and confer.  
13 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall  
14 provide to The Feed a written basis for its position. The Parties shall continue to meet and  
15 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should  
16 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
17 confer period.

18           **5.3**     In the event that The Feed initiates or otherwise requests a modification under  
19 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
20 modification of the Consent Judgment, The Feed shall reimburse ERC its costs and reasonable  
21 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the  
22 motion or application. ERC shall not be reimbursed for costs or attorney’s fees for a  
23 ministerial motion (such as a change in name or contact information) or if ERC does not  
24 expend more than two (2) hours of attorney time on the joint motion.

25           **5.4**     In the event that Proposition 65 is repealed or preempted as to food products,  
26 then The Feed shall have no further obligation pursuant to this Consent Judgment with respect  
27 to the Covered Products, to the extent that the Covered Products are so affected.

28     ///

1     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
2     **JUDGMENT**

3             **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or  
4 terminate this Consent Judgment.

5             **6.2**     If ERC alleges that any Covered Product fails to qualify as a Conforming  
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
7 inform The Feed in a reasonably prompt manner of its test results, including information  
8 sufficient to permit The Feed to identify the Covered Products at issue. The Feed shall, within  
9 thirty (30) days following such notice, provide ERC with testing information, from an  
10 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
11 demonstrating The Feed’s compliance with the Consent Judgment. The Parties shall first  
12 attempt to resolve the matter prior to ERC taking any further legal action.

13     **7.     APPLICATION OF CONSENT JUDGMENT**

14             This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
16 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
17 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application  
18 to any Covered Product that is distributed or sold exclusively outside the State of California and  
19 that is not used by California consumers.

20     **8.     BINDING EFFECT, CLAIMS COVERED AND RELEASED**

21             **8.1**     This Consent Judgment is a full, final, and binding resolution between ERC, on  
22 behalf of itself and in the public interest, and The Feed and its respective officers, directors,  
23 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
24 franchisees, licensees, customers (not including private label customers of The Feed),  
25 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
26 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
27 of them (collectively, “Released Parties”).

28             **8.2**     ERC, acting in the public interest, releases the Released Parties from any and all

1 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead  
2 and/or cadmium and/or mercury from the Covered Products as set forth in the Notices of  
3 Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released  
4 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
5 penalties, fees, costs, and expenses asserted, or that could have been asserted from the  
6 handling, use, or consumption of the Covered Products, as to any alleged violation of  
7 Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
8 65 warnings on the Covered Products regarding lead and/or cadmium and/or mercury up to and  
9 including the Effective Date.

10 **8.3** ERC on its own behalf only, and The Feed on its own behalf only, further waive  
11 and release any and all claims they may have against each other for all actions or statements  
12 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in  
13 connection with the Notices and Complaint up through and including the Effective Date,  
14 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
15 enforce the terms of this Consent Judgment.

16 **8.4** It is possible that other claims not known to the Parties, arising out of the facts  
17 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
18 discovered. ERC on behalf of itself only, and The Feed on behalf of itself only, acknowledge  
19 that this Consent Judgment is expressly intended to cover and include all such claims up  
20 through and including the Effective Date, including all rights of action therefore. ERC and The  
21 Feed acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown  
22 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
23 claims. California Civil Code section 1542 reads as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
27 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
28 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
PARTY.

ERC on behalf of itself only, and The Feed on behalf of itself only, acknowledge and

1 understand the significance and consequences of this specific waiver of California Civil Code  
2 section 1542.

3 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to  
4 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
5 exposures to lead and/or cadmium and/or mercury in the Covered Products as set forth in the  
6 Notices and Complaint.

7 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or  
8 environmental exposures arising under Proposition 65, nor shall it apply to any of The Feed's  
9 products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

11 In the event that any of the provisions of this Consent Judgment are held by a court to be  
12 unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
13 affected.

14 **10. GOVERNING LAW**

15 The terms and conditions of this Consent Judgment shall be governed by and construed in  
16 accordance with the laws of the State of California.

17 **11. PROVISION OF NOTICE**

18 All notices required to be given to either Party to this Consent Judgment by the other shall  
19 be in writing and sent to the following agents listed below via first-class mail or via electronic  
20 mail where required. Courtesy copies via email may also be sent.

21 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

22 Chris Heptinstall, Executive Director, Environmental Research Center  
23 3111 Camino Del Rio North, Suite 400  
24 San Diego, CA 92108  
25 Ph: (619) 500-3090  
26 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

26 ///

27 ///

28 ///

1 With a copy to:  
2 Michael Freund  
3 Michael Freund & Associates  
4 1919 Addison Street, Suite 105  
5 Berkeley, CA 94704  
6 Telephone: (510) 540-1992  
7 Email: freund1@aol.com

8 **FOR THE FEED.COM, INC.; KYOKU SUPERFOODS LLC**

9 Heidi Huntington  
10 224 Commerce Street, Ste. A1  
11 Broomfield, CO 80020  
12 Attention: CEO  
13 Email: [Heidi@thefeed.com](mailto:Heidi@thefeed.com)

14 With a copy to:  
15 Matthew Pace  
16 Rimôn Law P.C.  
17 100 Park Avenue 16<sup>th</sup> Floor  
18 New York, NY 10017  
19 Telephone: (212) 363-0270  
20 Email: matthew.pace@rimonlaw.com

21 **12. COURT APPROVAL**

22 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
23 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
24 Consent Judgment.

25 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
27 prior to the hearing on the motion.

28 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
void and have no force or effect.

**13. EXECUTION AND COUNTERPARTS**

This Consent Judgment may be executed in counterparts, which taken together shall be  
deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
as the original signature.



1     **14. DRAFTING**

2             The terms of this Consent Judgment have been reviewed by the respective counsel for  
3 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms  
4 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
5 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
6 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
7 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
8 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
9 equally in the preparation and drafting of this Consent Judgment.

10     **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

11             If a dispute arises with respect to either Party's compliance with the terms of this Consent  
12 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or  
13 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may  
14 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

15     **16. ENFORCEMENT**

16             ERC may, by motion or order to show cause before the Superior Court of Alameda  
17 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
18 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
19 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
20 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
21 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent  
22 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are  
23 provided by law for failure to comply with Proposition 65 or other laws.

24     **17. ENTIRE AGREEMENT, AUTHORIZATION**

25             **17.1** This Consent Judgment contains the sole and entire agreement and  
26 understanding of the Parties with respect to the entire subject matter herein, including any and  
27 all prior discussions, negotiations, commitments, and understandings related thereto. No  
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
2 herein, shall be deemed to exist or to bind any Party.

3 17.2 Each signatory to this Consent Judgment certifies that he or she is fully  
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

5 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
6 **CONSENT JUDGMENT**

7 This Consent Judgment has come before the Court upon the request of the Parties. The  
8 Parties request the Court to fully review this Consent Judgment and, being fully informed  
9 regarding the matters which are the subject of this action, to:

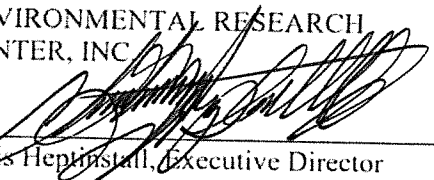
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
12 been diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section  
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

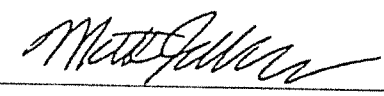
15 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after  
16 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

17 **IT IS SO STIPULATED:**

18  
19 Dated: 2/24/, 2023

ENVIRONMENTAL RESEARCH  
CENTER, INC  
By:   
Chris Heptinstall, Executive Director

20  
21  
22  
23 Dated: February 24, 2023

THE FEED.COM, INC.  
  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

24  
25  
26  
27  
28

1 Dated: February 24, 2023

KYOKU SUPERFOODS LLC



By:  
Its:

6 **APPROVED AS TO FORM:**

8 Dated: 2/24/, 2023

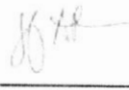
MICHAEL FREUND & ASSOCIATES

By: 

Michael Freund  
Attorney for Plaintiff Environmental  
Research Center, Inc.

14 Dated: February 24, 2023

AMIN TALATI WASSERMAN LLP

By: 

Jennifer Adams  
Attorney for Defendants The Feed.com,  
Inc. and Kyoku Superfoods LLC

**ORDER AND JUDGMENT**

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Judge of the Superior Court

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# **EXHIBIT A**

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

September 29, 2022

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**The Feed.com, Inc.**  
**Kyoku Superfoods LLC**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Swiss RX Total Recovery Chocolate Mint – Lead, Mercury, Cadmium**
- 2. Kyoku Daily Superfood Shake – Lead, Mercury**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least September 29, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [freund1@aol.com](mailto:freund1@aol.com).**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to The Feed.com, Inc.; Kyoku Superfoods LLC; and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)



**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by The Feed.com, Inc.;  
Kyoku Superfoods LLC**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 29, 2022



---

Michael Freund

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On September 29, 2022 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
The Feed.com, Inc.& Kyoku Superfoods LLC  
224 Commerce St, Ste A1  
Broomfield, CO 80020

Incorporating Services, Ltd.  
(Registered Agent for The Feed.com, Inc.&  
Kyoku Superfoods LLC)  
3500 S Dupont Hwy  
Dover, DE 19901

Matthew Johnson  
(Registered Agent for The Feed.com, Inc.)  
224 Commerce St, Ste A1  
Broomfield, CO 80020

On September 29, 2022 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On September 29, 2022 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O’Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

September 29, 2022

Page 6

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
1127 First Street, Ste C  
Napa, CA 94559  
CEPD@countyofnapa.org

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcda.org

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4th Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney  
Santa Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

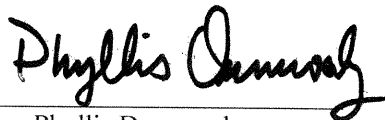
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On September 29, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on September 29, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado  
County  
778 Pacific St  
Placerville, CA 95667

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles  
County  
Hall of Justice  
211 West Temple St., Ste 1200  
Los Angeles, CA 90012

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Modoc  
County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA 92415

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
Downieville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4).



## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

# **EXHIBIT B**

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.371.0885

Michael Freund, Esq.

October 25, 2022

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**The Feed.com, Inc.**  
**Kyoku Superfoods LLC**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. Swiss RX Total Recovery Vanilla Chai- Lead, Cadmium**
- 2. Swiss RX Total Recovery Strawberry – Lead, Cadmium, Mercury**
- 3. Swiss RX Nitric Oxide - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least October 25, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [freund1@aol.com](mailto:freund1@aol.com).**

Sincerely,



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Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to The Feed.com, Inc.; Kyoku Superfoods LLC; and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by The Feed.com, Inc.;  
Kyoku Superfoods LLC**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: October 25, 2022

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Michael Freund

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On October 25, 2022 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
The Feed.com, Inc.& Kyoku Superfoods LLC  
224 Commerce St, Ste A1  
Broomfield, CO 80020

Incorporating Services, Ltd.  
(Registered Agent for The Feed.com, Inc.&  
Kyoku Superfoods LLC)  
3500 S Dupont Hwy  
Dover, DE 19901

Matthew Johnson  
(Registered Agent for The Feed.com, Inc.)  
224 Commerce St, Ste A1  
Broomfield, CO 80020

On October 25, 2022 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On October 25, 2022 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O’Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

October 25, 2022

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Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
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Lisa A. Smittcamp, District Attorney  
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2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator  
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220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
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550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

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Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
1127 First Street, Ste C  
Napa, CA 94559  
CEPD@countyofnapa.org

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Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co nevada.ca.us

Todd Spitzer, District Attorney  
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300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
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Prop65@placer.ca.gov

David Hollister, District Attorney  
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davidhollister@countyofplumas.com

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Riverside, CA 92501  
Prop65@rivcoda.org

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Sacramento, CA 95814  
Prop65@sacda.org

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SanDiegoDAProp65@sdcda.org

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San Diego, CA 92101  
CityAttyProp65@sandiego.gov

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350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

October 25, 2022

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Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney  
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1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

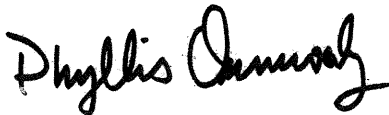
Phillip J. Cline, District Attorney  
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221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On October 25, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 25, 2022, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody

**Service List**

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

District Attorney, Modoc  
County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, El Dorado  
County  
778 Pacific St  
Placerville, CA 95667

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA 92415

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012

District Attorney, Humboldt  
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Eureka, CA 95501

District Attorney, San Mateo  
County  
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Redwood City, CA 94063

District Attorney, Imperial  
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El Centro, CA 92243

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
Downieville, CA 95936

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Los Angeles  
County  
Hall of Justice  
211 West Temple St., Ste 1200  
Los Angeles, CA 90012

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

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female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

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NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.